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UNITED STATES DISTRICT COURT  
 NORTHERN DISTRICT OF CALIFORNIA

SALVATORE FRANCESCO BEVIVINO )  
 )  
 Plaintiff, )  
 )  
 vs. )  
 )  
 VIRGIN AMERICA INC. )  
 Defendant )

CASE NO.

**CV 13 1910**

**COMPLAINT**

DEMAND FOR JURY TRIAL

**COMPLAINT**

1. Plaintiff Salvatore Francesco Bevivino (hereinafter "plaintiff") brings this action for contemporary and punitive damages based on his personal injuries and damage to reputation and apprehension against Virgin America Inc. This action arises out of an incident at San Francisco International Airport on April 28<sup>th</sup>, 2013 when plaintiff went to leave the aircraft after a Virgin America flight from Philadelphia to San Francisco and was detained and questioned by the Police and federal agencies at the request of the Captain on the subject flight.

2. Plaintiff seeks damages resulting from his personal injuries including damages for emotional and mental distress, disability, punitive damages and damages to reputation, embarrassment,

COMPLAINT

**FILED**

APR 25 2013

RICHARD W. WIEKING  
 CLERK, U.S. DISTRICT COURT  
 NORTHERN DISTRICT OF CALIFORNIA

NC

1 humiliation, fright, shock, loss of reputation, and denial of social  
2 pleasure and enjoyment, damage to plaintiff's professional  
3 reputation resulting in negative damage to plaintiff's career and  
4 other damages.

5 **PARTIES, JURISDICTION AND VENUE**

6 3. Plaintiff is an individual, of Italian ancestry, who is a  
7 United States citizen with his principal and permanent residence  
8 located at Brisbane, California.

9 4. Plaintiff is informed and believes and herein alleges, that at  
10 all times herein mentioned, defendant Virgin America Inc. provides  
11 air transportation services for passengers and cargo and operates  
12 flights daily between California and other parts of the United  
13 States, including Philadelphia. Defendant Virgin America Inc. is a  
14 Delaware corporation, with a place of business at 555 Airport  
15 Boulevard, Burlingame, California 94109, which is very near San  
16 Francisco International Airport ("SFO"), and it conducts regular,  
17 substantial and continuous business in California where it has  
18 registered its business with the California Secretary of State, has  
19 been issued California Entity Number C2846449 and has nominated C T  
20 Corporation System at 818 W. Seventh Street, Los Angeles CA 90017 as  
21 its agent for service in California. Further, Virgin America has a  
22 place of business in Los Angeles with its cargo facility located at  
23 5758 West Century Boulevard, Los Angeles, California 90045 and has an  
24 airline ticket office at the Los Angeles International Airport. At  
25 all material times defendant was acting as a common carrier providing  
26 air services and was subject to a heightened duty of care to  
27 plaintiff as a passenger on the defendant's flight.

28 5. This Court is vested with federal question subject matter

1 jurisdiction under 28 U.S.C. Section 1331 as the transportation out  
2 of which the subject matter of this action arose gives rise to  
3 various causes of action pursuant to 49 USC Section 40127  
4 (prohibiting discrimination in air transportation); 42 USC Section  
5 2000a (prohibiting discrimination or segregation in Places of Public  
6 Accommodation); 42 USC Section 1981 (prohibiting denial of equal  
7 rights under the law), and 42 USC Section 1983 (prohibiting  
8 violations of civil rights under color of state law.

9 6. Venue lies within this judicial district pursuant to the  
10 provisions of 28 U.S.C. Section 1391(b)(2).

11 **GENERAL ALLEGATIONS**

12 7. Plaintiff is a 52 year old male of Italian ancestry and has an  
13 Italian first, middle and last name. Plaintiff is of dark complexion  
14 and could be mistaken for being from the Middle East because of his  
15 appearance. Attached as **Exhibit A** to this complaint is a photograph  
16 of the plaintiff.

17 8. For the past 6 years plaintiff has been employed at Genentech  
18 with the job title "Business Manager Global Pharma" which is a  
19 responsible and serious position. In this position plaintiff is  
20 subject to ongoing security checks by his employer and having been  
21 taken into police custody as set forth in this complaint,  
22 plaintiff's employment may be threatened as a consequence of the  
23 police and federal agency actions described in this complaint. There  
24 are also positions with plaintiff's employer requiring United States  
25 Government Security Clearances and plaintiff would not become  
26 excluded from applying for these positions.

27 9. On April 28<sup>th</sup>, 2012 plaintiff had purchased air transportation  
28 on Virgin America Flight No. VX 0141 to fly from Philadelphia to San

1 Francisco. Plaintiff boarded the aircraft for this flight sometime  
2 around 5.00pm and was assigned seat 24F where he sat during the  
3 flight. Attached as **Exhibit B** is a copy of plaintiff's boarding pass  
4 receipt.

5 10. After takeoff and upon reaching the aircraft's cruise altitude,  
6 the plaintiff pressed the flight attendant call button to purchase a  
7 soft drink. A male flight attendant came to the plaintiff and  
8 pointed to the screen on the back of the seat in front of seat 24F  
9 and told the plaintiff to use the screen. Plaintiff stated that he  
10 did not desire to make his purchase that way and asked the attendant  
11 to bring him a drink. The male flight attendant then left the  
12 plaintiff's seat.

13 11. A second flight attendant then came to assist plaintiff and  
14 again plaintiff was told to use the screen to order his soft drink.  
15 Plaintiff responded saying to this flight attendant that he assumed  
16 he could have a drink brought to him like the other airlines and  
17 stated to the attendant that he would consider contacting Virgin  
18 America about the situation. Then a third flight attendant brought  
19 the plaintiff his soft drink.

20 12. The events set forth in paragraphs 10 and 11 above occurred  
21 over a 2 minute period. Plaintiff had no further contact with the  
22 flight crew during the flight crew other than to order a meal which  
23 he did by using the touch screen process required. For the balance  
24 of the flight the plaintiff purchased internet access and worked on  
25 his laptop.

26 13. When the aircraft landed at San Francisco International  
27 Airport, the plaintiff walked up to the aircraft door to disembark.  
28 At that point the plaintiff was pulled aside by the pilot as a



1 person of suspicion and the pilot asked the plaintiff to go with the  
2 six uniformed officers that were waiting for the plaintiff at the  
3 aircraft door. It transpired that the officers were a mixture of the  
4 San Francisco Airport Police, The FBI and other Federal Agencies.

5 14. The plaintiff went with the officers whereupon he was  
6 segregated and taken into custody against his will, and escorted to  
7 a room in front of the other passengers and the crew where he was  
8 asked to make a statement. After being segregated, plaintiff was  
9 detained against his will by the officers and was not free to leave  
10 and this directly and intentionally and maliciously interfered with  
11 the plaintiff's right to move freely and plaintiff felt an  
12 apprehension that force would have been inflicted upon him if he  
13 attempted to leave.

14 15. Plaintiff told the officers that he did not know why he had  
15 been detained and had his right to move freely interfered with and  
16 precluded, and recounted the events of the flight including the  
17 events relating to obtaining of his soft drink as set forth above.  
18 The officers then continued to detain plaintiff while they obtained  
19 a statement from the flight crew and the plaintiff's detention and  
20 restriction on his right to freely move was further imposed.  
21 Plaintiff continued to feel an apprehension that force would have  
22 been inflicted upon him if he attempted to leave.

23 16. While the officers were taking statements from the crew, the  
24 pilot came over to the plaintiff, while he continued to be detained  
25 and was not free to leave, and asked him why he had been yelling  
26 obscenities at his crew. The plaintiff told the pilot that he did  
27 not use any profanities during his brief 2 minute exchange with the  
28 crew regarding the soft drink order.

17. The plaintiff was then told by the officers that the crew had stated that the plaintiff had used the cabin toilet during the flight and that he had failed to flush the toilet after use. The officer then told the plaintiff that the matter seemed to be a customer service issue and then the officers gave the plaintiff a release form and told him that he was free to leave. Attached as **Exhibit C** is a copy of the Release/Dispensation Certificate that plaintiff was provided by the officers when he was told that he was free to leave on April 28<sup>th</sup>, 2012.

18. Subsequently the plaintiff obtained a copy of the Police Report which states that the Pilot stated that at no time did his crew feel threatened regarding this passenger. Attached as **Exhibit D** is a copy of the Incident Report of the San Francisco Police-Airport Bureau.

19. At all times herein, defendant through the pilot, acted in an arbitrary and capricious manner with respect to this customer service matter and having instigated the taking into custody of the plaintiff was not inimical to the safety or security of the passengers or the aircraft on Virgin America Flight No. VX 0141 from Philadelphia to San Francisco on April 28<sup>th</sup> 2012, which the defendant's pilot admitted to the police on April 28<sup>th</sup>, 2012.

20. After plaintiff was released from the police custody he contacted defendant Virgin America by telephone and learned that it is the custom and policy of this airline to provide one-on-one soft drink service to passengers when requested.

**FIRST CAUSE OF ACTION**

**NEGLIGENCE**

21. Plaintiff incorporates by reference each and every allegation

1 contained in Paragraphs 1 through 20 as though fully set forth.

2 22. Defendant owed a heightened duty of care to plaintiff to  
3 exercise care, diligence and vigilance in the exercise of their  
4 contractual duties pursuant to the contract of carriage under which  
5 plaintiff was travelling on Virgin America Flight on April 28<sup>th</sup>  
6 2012.

7 23. Defendant breached that duty when it negligently and without  
8 exercise of reasonable care and diligence had plaintiff taken into  
9 custody for no rational reason under the cover of a customer service  
10 response which was not related to the security or safety of the  
11 passengers or aircraft on Virgin American Flight VX 0141 from  
12 Philadelphia to San Francisco on April 28th 2012.

13 24. Defendant further breached its duties by failing to properly  
14 and adequately train its cabin staff to provide soft drinks to  
15 passengers when asked to do so by passengers, which defendant holds  
16 itself out as doing in its provided advertising and customer service  
17 information desk information by calling its 1 800 number.

18 25. Defendant further breached its duty by failing to properly  
19 train its pilots and cabin crew to investigate security and safety  
20 threats in the cabin on its flights so that they do not escalate a  
21 customer service inquiry with a security threat resulting in  
22 passengers being wrongfully detained against their will.

23 26. Defendant further breached its duty by failing to properly hire  
24 and train employees and agents to follow the law regarding equal  
25 treatment of passengers, and to protect passengers from being  
26 unlawfully discriminated against based on perceived national origin,  
27 race and ancestry.

28 27. Defendant knew, or in the exercise of reasonable diligence and

1 care should have known, that its negligent conduct and actions  
2 described herein would cause injuries and damages to plaintiff.

3 28. As a direct and proximate result of this negligence, plaintiff  
4 has been injured and incurred damages in a sum to be proved at  
5 trial, but including damages in the form of apprehension,  
6 embarrassment, humiliation, mortification, fright, shock, mental  
7 anguish and emotional distress, denial of social pleasures and  
8 enjoyment, and loss of reputation, damage to plaintiff's  
9 professional reputation resulting in negative damage to plaintiff's  
10 career and other damages.

11 **SECOND CAUSE OF ACTION**

12 **INTENTIONAL INFLICTION OF EMOTIONAL DISTRESS**

13 29. Plaintiff incorporates by reference each and every allegation  
14 contained in Paragraphs 1 through 28 as though fully set forth.

15 30. Defendant owed a heightened duty of care to plaintiff to  
16 exercise care, diligence and vigilance in the exercise of their  
17 contractual duties pursuant to the contract of carriage under which  
18 plaintiff was travelling on Virgin America Flight on April 28<sup>th</sup>  
19 2012.

20 31. Defendant breached that duty when it intentionally and  
21 negligently and without exercise of reasonable care and diligence  
22 had plaintiff taken into custody for no rational reason under the  
23 cover of a customer service response which was not related to the  
24 security or safety of the passengers or aircraft on Virgin American  
25 Flight VX 0141 from Philadelphia to San Francisco on April 28th  
26 2012.

27 32. Defendant further breached its duties by intentionally failing  
28 to properly and adequately train its cabin staff to provide soft



1 drinks to passengers when asked to do so by passengers, which  
2 defendant holds itself out as doing in its provided advertising and  
3 customer service information desk information by calling its 1 800  
4 number.

5 33. Defendant further breached its duty by intentionally failing to  
6 properly train its pilots and cabin crew to investigate security and  
7 safety threats in the cabin on its flights so that they do not  
8 escalate a customer service inquiry with a security threat resulting  
9 in passengers being wrongfully detained against their will.

10 34. Defendant further breached its duty by intentionally failing to  
11 properly hire and train employees and agents to follow the law  
12 regarding equal treatment of passengers, and to protect passengers  
13 from being unlawfully discriminated against based on perceived  
14 national origin, race and ancestry.

15 35. Defendant knew that its intentional and negligent conduct and  
16 actions described herein including its extreme and outrageous  
17 conduct of discriminating against plaintiff and violating the law by  
18 not treating plaintiff in a manner equal to the way other passengers  
19 on the flight were treated would cause injuries and damages to  
20 plaintiff in the form of severe emotional distress. Knowing this  
21 defendant continued to act in a reckless and intentional manner and  
22 arranged to have plaintiff taken into custody for no rational reason  
23 when the flight arrived in San Francisco on April 28<sup>th</sup> 2012.

24 36. As a direct and proximate result of this intentional reckless  
25 and wanton conduct, plaintiff has been injured and incurred damages  
26 in a sum to be proved at trial, but including damages in the form of  
27 apprehension, embarrassment, humiliation, mortification, fright,  
28 shock, mental anguish and emotional distress, denial of social

1 pleasures and enjoyment, and loss of reputation, damage to  
2 plaintiff's professional reputation resulting in negative damage to  
3 plaintiff's career and other damages.

4 **THIRD CAUSE OF ACTION**

5 **TRESPASS TO PERSON/FALSE IMPRISONMENT**

6 37. Plaintiff incorporates by reference each and every allegation  
7 contained in Paragraphs 1 through 36 as though fully set forth.

8 38. Without lawful justification or privilege, defendant segregated  
9 and physically separated plaintiff from the other passengers as  
10 plaintiff was about to engage in the disembarkation process from  
11 Virgin American Flight VX 0141 from Philadelphia to San Francisco on  
12 April 28th 2012.

13 39. Defendant's actions resulted in plaintiff being segregated by  
14 the officers and taken into custody against his will, and escorted  
15 to a limited space room in a confined area in front of the other  
16 passengers and the crew where he was asked to make a statement.  
17 After being segregated, plaintiff was detained against his will by  
18 the officers and was not free to leave and this directly and  
19 intentionally and maliciously interfered with the plaintiff's right  
20 to move freely and plaintiff felt an apprehension that force would  
21 have been inflicted upon him if he attempted to leave.

22 40. Plaintiff was detained in this confined space and interrogated  
23 by the police and federal agents and was not free to leave during  
24 this interrogation. At all times herein plaintiff felt an inability  
25 to controvert or disobey the orders of the police and the federal  
26 agents who were also acting as the agents of the defendant Virgin  
27 America Inc. with defendant also acting under the guise of state and  
28 federal authority.

1 41. Defendant Virgin Atlantic Inc.'s actions sound in trespass to  
2 person and are actionable per se and proximately caused plaintiff's  
3 damages in the form of apprehension, embarrassment, humiliation,  
4 mortification, fright, shock, mental anguish and emotional distress,  
5 denial of social pleasures and enjoyment, and loss of reputation,  
6 damage to plaintiff's professional reputation resulting in negative  
7 damage to plaintiff's career and other damages.

8 42. At all material times plaintiff felt an inability to controvert  
9 or disobey the orders of defendant's agents due to defendant's  
10 actions in concert with the San Francisco Airport Police and due to  
11 defendant acting under the guise of the state authority. Defendant's  
12 discriminatory actions deprived plaintiff of his right under 42 USC  
13 Section 2000a, et al and 49 USC Section 40127, et al.

14 **FOURTH CAUSE OF ACTION**

15 **49 USC Section 40127-**

16 **PROHIBITION OF DISCRIMINATION IN AIR TRANSPORTATION**

17 43. Plaintiff incorporates by reference each and every allegation  
18 contained in Paragraphs 1 through 42 as though fully set forth.

19 44. At all material times, defendant was an air carriers engaged in  
20 air transportation services and at all material times plaintiff was  
21 a passenger on defendant's airline.

22 45. Without lawful justification or privilege, and acting in an  
23 arbitrary and capricious manner, defendant's pilot, acting through  
24 federal and state agents, segregated and physically separated  
25 plaintiff from the other passengers as plaintiff was about to engage  
26 in the disembarkation process from Virgin American Flight VX 0141  
27 from Philadelphia to San Francisco on April 28th 2012. Plaintiff was  
28 pulled aside and subsequently detained and interrogated by police

1 and federal agents against his will at defendant's direction as a  
 2 person of suspicion based on his ancestry, and a mistaken national  
 3 origin basis given that plaintiff has an appearance as being a  
 4 person of Middle Eastern ethnicity and origin. Such action in  
 5 itself was discriminatory and was arbitrary and capricious and not  
 6 based on any rational or reasonable basis, was without  
 7 justification, and violated plaintiff's civil rights.

8 46. Defendant Virgin Atlantic Inc.'s actions proximately caused  
 9 plaintiff's damages in the form of apprehension, embarrassment,  
 10 humiliation, mortification, fright, shock, mental anguish and  
 11 emotional distress, denial of social pleasures and enjoyment, and  
 12 loss of reputation, damage to plaintiff's professional reputation  
 13 resulting in negative damage to plaintiff's career and other  
 14 damages.

#### 15 **FIFTH CAUSE OF ACTION**

#### 16 **42 USC Section 2000a**

#### 17 **PROHIBITION AGAINST DISCRIMINATION OR DEGREGATIONIN**

#### 18 **PLACES OF PUBLIC ACCOMODATION**

19 47. Plaintiff incorporates by reference each and every allegation  
 20 contained in Paragraphs 1 through 46 as though fully set forth.

21 48. At all material times, defendant was an air carriers engaged in  
 22 air transportation services and at all material times plaintiff was  
 23 a passenger on defendant's airline.

24 49. At all material times herein plaintiff was entitled to full and  
 25 equal enjoyment of places of public accommodation, without  
 26 discrimination or segregation on the grounds of race, color or  
 27 national origin. At all material times herein both the Virgin  
 28 America aircraft on which plaintiff travelled and San Francisco



1 Airport are places and locations of public accommodation under the  
2 law, as their operations serve the public and affect commerce.  
3 50. Without lawful justification or privilege, and acting in an  
4 arbitrary and capricious manner, defendant's pilot, acting through  
5 federal and state agents, segregated and physically separated  
6 plaintiff from the other passengers as plaintiff was about to engage  
7 in the disembarkation process from Virgin American Flight VX 0141  
8 from Philadelphia to San Francisco on April 28th 2012. Plaintiff was  
9 pulled aside and subsequently detained and interrogated by police  
10 and federal agents against his will at defendant's direction as a  
11 person of suspicion based on a mistaken national origin basis given  
12 that plaintiff has an appearance as being a person of Middle Eastern  
13 ethnicity and origin. Such action in itself was discriminatory and  
14 was arbitrary and capricious and not based on any rational or  
15 reasonable basis, was without justification, and violated  
16 plaintiff's civil rights.

17 51. Defendant Virgin Atlantic Inc.'s actions proximately caused  
18 plaintiff's damages in the form of apprehension, embarrassment,  
19 humiliation, mortification, fright, shock, mental anguish and  
20 emotional distress, denial of social pleasures and enjoyment, and  
21 loss of reputation, damage to plaintiff's professional reputation  
22 resulting in negative damage to plaintiff's career and other  
23 damages.

24 **SIXTH CAUSE OF ACTION**

25 **42 USC Section 1981**

26 **PROHIBITION OF DENIAL OF EQUAL RIGHTS UNDER THE LAW**

27 52. Plaintiff incorporates by reference each and every allegation  
28 contained in Paragraphs 1 through 51 as though fully set forth.

1 53. At all material times, defendant was an air carrier engaged in  
2 commercial air transportation services and at all material times  
3 plaintiff was a passenger on defendant's airline. During the passage  
4 of commercial air transportation plaintiff was entitled to travel  
5 and be free from discrimination in his travel right and to have  
6 nondiscriminatory passage and not be treated differently from other  
7 passengers when he travelled on commercial air carriage by Virgin  
8 America on April 28<sup>th</sup> 2012.

9 54. Without lawful justification or privilege, and acting in an  
10 arbitrary and capricious manner, defendant's pilot, acting through  
11 federal and state agents, segregated and physically separated  
12 plaintiff from the other passengers as plaintiff was about to engage  
13 in the disembarkation process from Virgin American Flight VX 0141  
14 from Philadelphia to San Francisco on April 28th 2012. Plaintiff was  
15 pulled aside and subsequently detained and interrogated by police  
16 and federal agents against his will at defendant's direction as a  
17 person of suspicion based on his ancestry, and a mistaken national  
18 origin basis given that plaintiff has an appearance as being a  
19 person of Middle Eastern ethnicity and origin and plaintiff was in  
20 this way not treated in the same way as the other passengers on the  
21 flight and was discriminated against. Such action in itself was  
22 discriminatory and was arbitrary and capricious and not based on any  
23 rational or reasonable basis, was without justification, and  
24 violated plaintiff's civil rights and resulted in plaintiff being  
25 singled out and subjected to a separate standard of suspicion than  
26 other passengers resulting in different and discriminatory unlawful  
27 treatment of plaintiff by defendant.

28 55. Defendant Virgin Atlantic Inc.'s actions proximately caused

1 plaintiff's damages in the form of apprehension, embarrassment,  
2 humiliation, mortification, fright, shock, mental anguish and  
3 emotional distress, denial of social pleasures and enjoyment, and  
4 loss of reputation, damage to plaintiff's professional reputation  
5 resulting in negative damage to plaintiff's career and other  
6 damages.

7 **SEVENTHTH CAUSE OF ACTION**

8 **42 USC Section 1983**

9 **PROHIBITION OF DENIAL OF CIVIL RIGHTS UNDER COLOR OF STATE LAW**

10 56. Plaintiff incorporates by reference each and every allegation  
11 contained in Paragraphs 1 through 55 as though fully set forth.

12 57. At all material times, defendant was an air carrier engaged in  
13 commercial air transportation services and at all material times  
14 plaintiff was a passenger on defendant's airline. At all material  
15 times herein defendants acted under the color of California state  
16 law and in concert with the San Francisco Airport police in  
17 discriminating against, detaining and confining plaintiff against  
18 his will at the San Francisco Airport on April 28<sup>th</sup> 2012.

19 58. Without lawful justification or privilege, and acting in an  
20 arbitrary and capricious manner, defendant's pilot, acting through  
21 state agents, segregated and physically separated plaintiff from the  
22 other passengers as plaintiff was about to engage in the  
23 disembarkation process from Virgin American Flight VX 0141 from  
24 Philadelphia to San Francisco on April 28th 2012. Plaintiff was  
25 pulled aside and subsequently detained and interrogated by police  
26 against his will at defendant's direction as a person of suspicion  
27 based on his ancestry, and a mistaken national origin basis given  
28 that plaintiff has an appearance as being a person of Middle Eastern

1 ethnicity and origin. Such action in itself was arbitrary and  
2 capricious and not based on any rational or reasonable basis, was  
3 without justification, and violated plaintiff's civil rights.

4 59. At all material times plaintiff felt an inability to controvert  
5 or disobey the orders of defendant's agents due to defendant's  
6 actions in concert with the San Francisco Airport Police and due to  
7 defendant acting under the guise of the state authority. Defendant's  
8 discriminatory actions deprived plaintiff of his right under 42 USC  
9 Section 2000a, et al and 49 USC Section 40127, et al.

10 60. Defendant Virgin Atlantic Inc.'s actions proximately caused  
11 plaintiff's damages in the form of apprehension, embarrassment,  
12 humiliation, mortification, fright, shock, mental anguish and  
13 emotional distress, denial of social pleasures and enjoyment, and  
14 loss of reputation, damage to plaintiff's professional reputation  
15 resulting in negative damage to plaintiff's career and other  
16 damages.

17 **EIGHTH CAUSE OF ACTION**

18 **DAFAMATION**

19 61. Plaintiff incorporates by reference each and every allegation  
20 contained in Paragraphs 1 through 60 as though fully set forth.

21 62. At all material times herein the subject aircraft on which  
22 plaintiff travelled, the gate area and retaining offices at the San  
23 Francisco Airport are public places where the travelling public have  
24 visual access and can hear spoken words by the pilot, crew and  
25 police in the gate area and on the aircraft.

26 63. Defendant's cabin crew and pilot defamed plaintiff both by  
27 public statement at the boarding area and in the area where the  
28 police retained plaintiff in custody making false statements about



1 what plaintiff was alleged to have said and done. These statements  
2 were published both verbally and by innuendo in front of the other  
3 passengers disembarking from the flight and the general public  
4 around the gate area and surrounds.

5 64. These statements were to the effect that plaintiff had failed  
6 to flush the toilet during the flight and that he had used profanity  
7 to the flight crew both of which were false. Such defamatory  
8 language was also incorporated in the subject and resulting police  
9 report.

10 65. As a direct and proximate result of making these false  
11 statements and defaming plaintiff, he may be precluded from future  
12 employment promotions should his employer invoke a policy requiring  
13 government security checks on persons such as plaintiff. Furthermore  
14 plaintiff has suffered extreme humiliation, embarrassment, mental  
15 and emotional anguish as a result of defendant's actions.  
16 Accordingly plaintiff has been injured and incurred damages in a sum  
17 to be proved at trial, but including damages in the form of both  
18 compensatory and punitive damages.

19 **NINTH CAUSE OF ACTION**  
20 **PUNITIVE DAMAGES**

21 66. Plaintiff incorporates by reference each and every allegation  
22 contained in Paragraphs 1 through 65 as though fully set forth.

23 67. At all material times herein defendant's acts were, deliberate,  
24 intentional, wanton, malicious and oppressive, and done with wanton  
25 disregard of the consequences to plaintiff, and defendant's acts  
26 should be punished by an award of punitive damages. Defendant knew  
27 that its acts of having plaintiff put under the police and federal  
28 agency custody without freedom to leave would result in harm to

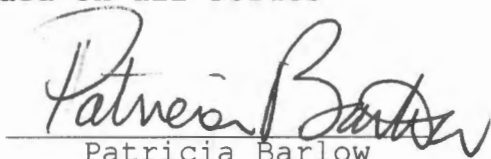
1 plaintiff.

2 WHEREFORE, as a legal and proximate cause of the acts or  
3 omissions of the defendant as set forth in this complaint, plaintiff  
4 demands judgment as follows:

- 5 1. For general damages according to proof but no less than
- 6 \$500,000.00;
- 7 2. For special damages according to proof;
- 8 3. For punitive damages;
- 9 4. For costs of suit incurred herein;
- 10 5. Attorney Fees, and
- 11 6. For such other and further relief as the court may deem proper.

12  
13 **A jury trial is hereby demanded on all issues**

14  
15 DATED: April 25<sup>th</sup> 2013

16   
Patricia Barlow  
Attorney for Plaintiff













RELEASE/DETENTION CERTIFICATE

As required by the provisions of Penal Code Section 851.6, I hereby certify that the taking into custody of SALVATORE F BEVINO on 04/28/12 by the SFPD-AIRPORT BUREAU was a detention only, not an arrest.

SALVATORE F BEVINO was released on 04/28/12 by the SFPD-AIRPORT BUREAU. Pertinent portions of Penal Code Sections 849, 849.5 and 851.6 are included below.

Signed: [Signature]

Title and ID No. : OFFICIAL ID

PENAL CODE SECTION 849 PROVIDES, IN PART:

- (a) When an arrest is made without a warrant by a peace officer or private person, the person arrested, if not otherwise released, shall, without unnecessary delay, be taken before the nearest or most accessible magistrate in the county in which the offense is triable, and a complaint stating the charge against the arrested person be laid before such magistrate.
- (b) Any peace officer may release from custody, instead of taking such person before a magistrate, any person arrested without a warrant whenever:
- (1) He is satisfied that there are insufficient grounds for making a criminal complaint against the person arrested.
  - (2) The person was arrested for intoxication only, and no further proceedings are desirable.
  - (3) The person was arrested only for being under the influence of a narcotic, drug, or restricted dangerous drug and such person is delivered to a facility or hospital for treatment and no further proceedings are desirable.
- (c) Any record of arrest of a person released pursuant to paragraphs (1) and (3) of subdivision (b) shall include a record of release. Thereafter, such arrest shall not be deemed an arrest, but a detention.

PENAL CODE SECTION 849.5 PROVIDES:

In any case in which a person is arrested and released and no accusatory pleading is filed charging him with an offense, any record of arrest of the person shall include a record of release. Thereafter, the arrest shall not be deemed an arrest, but a detention only.

PENAL CODE SECTION 851.6 PROVIDES, IN PART:

- (a) In any case in which a person is arrested and released pursuant to paragraph (1) or (3) of subdivision (b) of Section 849, the person shall be issued a certificate, signed by the releasing officer or his superior officer, describing the action as a detention.
- (b) In any case in which a person is arrested and released and no accusatory pleading is filed charging him with an offense, the person shall be issued a certificate by the law enforcement agency which arrested him describing the action as a detention.







**CONTROLLED**  
Page: 2  
**CONTROLLED**  
**GREG MUNKS, SHERIFF**  
**SAN MATEO COUNTY**

## Incident / Investigation Report

San Francisco Police - Airport Bureau

Case# 12-11959

### Officer's Narrative (continued)

began using profanities. [REDACTED] passed by the restroom and saw that Bevivino left the door open and did not flush the toilet. [REDACTED] thinks Bevivino was not talking to anyone in general but just talking out loud.

(6B113) Sgt. Lock #1369 and (6B109) Sgt. Halley #1163 arrived on scene. Bevivino exited the plane and he was detained in front of Gate 54A. Sgt. Lock advised me to contact the FBI. TSA Shih was also on scene along with ADM Walsh. I spoke with Special Agent Paul Howard of the FBI and advised him of this incident. A records check through dispatch revealed no wants or warrants for Bevivino.

Bevivino told me that he was having problems ordering a drink with the on board computer and asked the flight attendant for help. Bevivino stated that the flight attendant ignored him and he became frustrated. Ofc. Dear issued an 849(b) PC Release/Detention Certificate to Bevivino (see attached) and he was released from the scene.

Attachments : Release/Detention certificate

CONTROLLED  
DOCUMENT  
NOT TO BE  
DUPLICATED  
GREG MUNKS, SHERIFF  
SAN MATEO COUNTY



## **PROOF OF SERVICE**

United States District Court For The Northern District Of California

I am employed in the County of San Francisco, State of California, I am over the age of eighteen years, and not a party to the within action. My business address is 1611 Jackson St, San Francisco, California 94109.

On April 25<sup>TH</sup>, 2013, I served the document(s) described as:

- **SUMMONS**
- **COMPLAINT**
- **CIVIL COVER SHEET**

on the parties in this action addressed as follows:


SEE SERVICE LIST BELOW

in the following manner:

- ☐ (BY FAX): by transmitting via facsimile the document(s) listed above to the fax number(s) set forth below, or as stated on the attached service list, on this date before 5:00 p.m.
- ☐ (BY EMAIL): by emailing the document as a PDF document(s) listed above
- ☐ (BY MAIL): as follows: I am "readily familiar" with the firm's practice of collection and processing correspondence for mailing. Under that practice it would be deposited with the U.S. Postal Service on that same day with postage thereon fully prepaid at San Francisco, California in the ordinary course of business. I am aware that on motion of the party served, service is presumed invalid if postal cancellation date or postage meter date is more than on day after the date of deposit for mailing in affidavit.
- ✓ (BY OVERNIGHT DELIVERY): **I caused such envelope(s) to be delivered to an overnight delivery carrier with delivery fees provided for, addressed to the person(s) on whom it is to be served.**
- ☐ (BY PERSONAL SERVICE): I caused such envelope(s) to be delivered by hand this date to the offices of the addressee(s).
- ☐ (BY CM/ECF): by electronic filing system with the clerk of the Court which will send a Notice of Electronic Filing to all parties with an e-mail address of record, who have filed a Notice of Consent to Electronic Service in this action.

I declare that I am employed in the office of a member of the bar of this Court at whose direction the service was made.

Executed on April 25<sup>TH</sup>, 2013 at San Francisco, California.

  
\_\_\_\_\_  
Georgina Otto

**SERVICE LIST**  
C T CORPORATION SYSTEM  
818 W SEVENTH STREET  
LOS ANGELES  
CA 90017